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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/540,697	03/31/2000	Michael F. Angelo	COMP:0061	3660

7590 09/08/2005

Intellectual Property Administration
Legal Dept., M/S 35
P.O. Box 272400
Ft. Collins, CO 80527-2400

EXAMINER

TRUONG, THANHNGA B

ART UNIT	PAPER NUMBER
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2135

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/540,697

Applicant(s)

ANGELO ET AL.

Examiner

Thanhnga B. Truong

Art Unit

2135

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: PTO-413.

Continuation of 11. does NOT place the application in condition for allowance because: Mattison and Miller, in combination, teach the claimed subject matter. In fact, Mattison teaches: In a computer system having a processor, a system memory, a flash memory, and a memory controller, a method comprising the steps of loading a flash memory upgrade program containing a new flash memory image and a digital signature into a portion of the system memory; configuring the memory controller to limit the processor to accessing only the flash memory and the portion of the system memory; verifying (e.g., validating or authenticating or confirming) the flash memory update program using the digital signature; and, updating the flash memory only if the flash memory upgrade program is authentic (see Mattison's abstract). Miller teaches: An apparatus and a method for protecting boot block code while allowing updating to BIOS code during a flash BIOS operation. The boot block code is stored in a boot block or boot region of a flash part, and then a copy of the boot block code is written into another region of the flash part. The image of the boot block code in the another region is compared with the boot block code in the boot block, and if there is a match, the boot block region is unprotected, thereby allowing an update of code in the boot block. The boot block code of the flashed-in BIOS image in the boot block region is compared with the copy of the boot block code in the another region, and if there is a match, the code in the boot block region is protected. If there is not a match or if a power failure occurs, the system is booted up using the boot block code in the another region (see Miller's abstract). Furthermore, Miller clearly discloses in his invention wherein the method also includes a step of validating the copied data in the second writable segment of the memory. The method further includes a step of setting the first writable segment to a non-protected, writable state. The method still further includes a step of erasing all data stored in the first writable segment. The method also includes a step of updating the first writable segment with updated code or data, the updated code or data including boot block code. The method further includes a step of comparing the boot block code stored in the first writable segment with the boot block code stored in the second writable segment. If the comparison is such that the boot block codes stored in the first and second rewritable segments are identical, the method includes a step of setting the first rewritable segment to the protected, non-writable state (column 3, lines 36-51 of Miller). Therefore, with the teaching of verifying or validating or authenticating or confirming of Mattison's flash memory; and the protecting boot block code and steps of validating data within the memory during a flash BIOS operation of Miller's system, the combination of teaching between these two prior arts (Mattison and Miller) are more than sufficient.

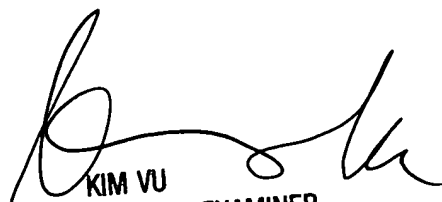
As a matter of fact, Mattison and Miller do not need to disclose anything over and above the invention as claimed in order to render it unpatentable or anticipate. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claimed limitations.

Furthermore, Davis teaches: A cryptographic device is implemented in communication with a host processor to prevent the host processor from performing a standard boot-up procedure until a basic input output system (BIOS) code is authenticated. This is accomplished by a cryptographic device which is addressed by the host processor during execution of a first instruction following a power-up reset. The cryptographic device includes a first integrated circuit (IC) device and a second IC device. The first IC device includes a memory to contain firmware and a root certification key. The second IC device includes logic circuitry to execute a software code to authenticate the BIOS code before permitting execution of the BIOS code by the host processor (see abstract). In addition, Davis teaches the process of the hashing wherein concurrent or subsequent to this data transfer, within the cryptographic device, the BIOS certificate is decrypted using the root certification key (block 660). This operation is performed to retrieve a public key of the signatory of the BIOS signature (e.g., BIOS vendor). Then, the preloaded digest signature is decrypted using the public key of the BIOS vendor, for example, to recover a pre-loaded digest (block 665). After recovering the pre-loaded digest, the BIOS code is read and undergoes the one-way hash function to produce a resultant digest (block 670). The resultant digest is compared to the pre-loaded digest (block 675). If no match occurs, the host processor is precluded from continuing its boot procedure (blocks 680 and 685). However, if there is a match, the BIOS code has been authenticated as valid, which permits the host processor to execute the software code, that means continuing its boot procedure (column 5, lines 66-67 through column 6, lines 1-13).

Therefore, the combination of these prior arts clearly and precisely disclose the entire claimed subject matter.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the combination of Mattison and Miller and the combination of Mattison, Miller, and Davis are sufficient.

For all the above reasons, it is believed that the rejections should be sustained.


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